

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-310

May 3, 2000

OXFORD COUNTY TELEPHONE
SERVICE COMPANY
Petition for Finding of Public Convenience
and Necessity to Provide Resold
Competitive Local Service and
Competitive Local and Interexchange
Dedicated Services on a Facilities Basis
and Resale Bases

ORDER GRANTING AUTHORITY TO
PROVIDE LOCAL EXCHANGE SERVICE
AS A RESELLER AND RESOLD AND
FACILITIES-BASED DEDICATED
SERVICES; AND APPROVING
SCHEDULE OF RATES AND TERMS
AND CONDITIONS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, the Commission grants Oxford County Telephone Service Company d/b/a Oxford Networks (OCTSC) the authority to provide competitive local exchange service as a reseller and facilities-based and resold dedicated (unswitched) services, and facilities-based and resold intrastate interexchange service in the State of Maine. We approve the Company's Terms and Conditions and Rate Schedules. We also exempt OCTSC from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On February 19, 1999, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, Oxford County Telephone Service Company filed a petition with the Commission requesting authority to provide resold local exchange service and resold and facilities-based dedicated services in Maine. Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require an additional utility to provide service in a location where another utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting OCTSC the authority to provide local exchange and dedicated services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

OCTSC's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and interexchange services in Maine.

II. SERVICE TERRITORY

OCTSC has requested authority to provide resold local exchange service throughout the state. We grant that authority. We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale. OCTSC's authority to provide switched local exchange service is limited to resale unless it obtains further authorization from the Commission.

OCTSC has also requested authority to provide dedicated (unswitched) services, which may be provided using its own facilities, through UNEs it purchases from other carriers, or through services purchased from other carriers. Dedicated facilities are capable of carrying either interexchange or local traffic. We grant that authority. The grant of authority to provide dedicated unswitched services using facilities owned or controlled by OCTSC does not constitute authority to provide facilities-based switched local exchange service or facilities-based or resold interexchange service.

If OCTSC wishes to expand the scope of its authority in the future to provide facilities-based switched local exchange services, or to provide interexchange service, it shall seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. OCTSC shall simultaneously file amended Terms and Conditions pursuant to 35-A M.R.S.A. § 307 that state its proposed service territory for facilities-based local exchange service. OCTSC's proposed service territory for facilities-based local exchange service shall be limited to those areas in which it will be ready to provide facilities-based switched local exchange service within six months. The application shall include information establishing that readiness. It is not necessary for a CLEC with existing authority to present a full application in order to request

authority to provide facilities-based service or interexchange service. The Commission will act expeditiously on any such application and revisions of Terms and Conditions.

III. NEED TO FILE TERMS AND CONDITIONS AND RATE SCHEDULES

In order to provide actual service, a utility not only must have authority to provide service but must have on file with the Commission a schedule of rates, terms and conditions for the services it will provide. OCTSC has not filed any terms and conditions rate schedules for local exchange or dedicated services at this time. 35-A M.R.S.A. § 304 requires that a utility must file rate schedules and terms and conditions prior to providing a service, although a utility may provide services pursuant to special contracts, as provided in 35-A M.R.S.A. § 703(3-A). OCTSC has stated that it is preparing a set of terms and conditions and possibly rates for local exchange service. It is planning to concentrate initially on providing dedicated services and will probably be providing those pursuant to special contract. OCTSC's terms and conditions shall specify the areas in which it will actually provide originating and terminating local exchange service, and may do so by reference to incumbent local exchange carrier (ILEC) exchanges rather than by municipalities.

IV. INTERCONNECTION OR RESALE AGREEMENT(S)

In order to provide local exchange service, a CLEC must, as a practical matter, obtain an interconnection or resale agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for OCTSC's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153 (37), the "rural exemption" of 47 U.S.C. § 251 (f) will apply. All of Maine's independent incumbent local exchange carriers are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254" Although the service territory we grant today for resold local exchange service is statewide, and OCTSC's terms and conditions do not limit that service territory, as a practical matter it cannot offer local exchange service in the service territory of a rural ILEC until such time as that ILEC's rural exemption is terminated.

If OCTSC executes an interconnect agreement(s) with an ILEC(s) it shall obtain approval of that agreement by this Commission.

V. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, OCTSC must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. OCTSC shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

OCTSC has requested waivers from the requirements from 35-A M.R.S.A. §§ 707 and 708 for its local exchange service, although it did not request an exemption from the requirements of Chapter 210. We grant exemptions to OCTSC from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests. Because OCTSC's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, the Company must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, and its annual intrastate minutes for use for the purpose of determining its regulatory assessment.¹ If OCTSC resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales. Pursuant to Chapter 280, § 11(B), OCTSC

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 shall be subject to the notice requirements contained in the ordering paragraphs below.

In addition, OCTSC shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

The exemption from 35-A M.R.S.A. §§ 707 and 708 does not apply to Oxford Telephone Company and Oxford West Telephone Company, which are affiliated interests of OCTSC. Oxford and Oxford West Telephone and Telegraph Companies must continue to comply with the requirements of sections 707 and 708 because they are incumbent local exchange carriers, and the Commission actively regulates their rates.

¹The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

VI. OTHER REQUIREMENTS

OCTSC shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in the ordering paragraphs below.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Oxford County Telephone Service Company to provide resold competitive local exchange telephone service and facilities-based and resold dedicated services (which may carry local or interexchange traffic);
2. Exempt OCTSC from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year;
3. Exempt OCTSC from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but OCTSC shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707 (1)(A), that results in a merger, sale or transfer of a controlling interest of OCTSC or of any entity that owns more than 50% of OCTSC. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), OCTSC shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. OCTSC shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, OCTSC shall amend its rate schedules and terms and conditions to reflect any change in identity; and
4. Order that OCTSC shall not provide local exchange telephone service until it files with the Commission rates, terms and conditions or special contracts for the provision of such service;
5. Order that OCTSC shall comply with all applicable rules of the Commission.

Dated at Augusta, Maine, this 3rd day of May, 2000.

BY ORDER OF THE COMMISSION

Raymond J. Robichaud
Acting Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond